IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 15909 of 2003(R)

PETITIONER:

VARGHESE THUNDIYIL,
THUNDIYIL HOUSE, MULLAKKAL, ALAPPUZHA.

BY ADV. SRI.M.RAJASEKHARAN NAYAR

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, ALAPPUZHA.

2. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
AMBALAPPUZHA TALUK, ALAPPUZHA.

3. THE ASSISTANT EXECUTIVE ENGINEER
(AGRICULTURAL), ALAPPUZHA.

BY GOVERNMENT PLEADER SRI. P. BENJAMIN PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. 509/03, I.A. 13134/03 IN I.A.509/03 & I.A. 811/05 IN I.A.13134/03 IN I.A.509/03, ALL IN W.P.C. NO. 15909/2003

DISMISSED

30.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE PLAN PREPARED BY THE THIRD RESPONDENT.

EXT.P2 PHOTOCOPY OF THE RESOLUTION DATED 5.6.1999 PASSED BY THE PADASEKHARA COMMITTEE AND SUBMITTED TO THE FIRST RESPONDENT.

EXT.P3 PHOTOCOPY OF THE NOTE OF THE MINISTER FOR AGRICULTURE DATED 4.8.1999

EXT.P4 TRUE COPY OF THE LETTER NO. AE(S) 580/99 DATED 7.10.1999 FROM THE THIRD RESPONDENT.

EXT.P5 TRUE COPY OF THE GOVERNMENT ORDER NO. G.O.(Rt) NO. 4968/99/RD/DATED 11.11.1999 ISSUED BY THE GOVERNMENT.

EXT.P6 PHOTOCOPYB OF THE DEMAND NOTICE ISSUED BY THE 2ND RESPONDENT DATED 1.4.2003 NO. B6,8/03/MIS. AND RECEIVED BY THE PETITIONER ON 29.4.2003

EXT.P7 TRUE COPY OF THE OBJECTION BEFORE THE FIRST RESPONDENT ON 2.5.2003

EXT.P8 TRUE COPY OF THE JUDGMENT IN OP 10127 OF 1994 (E) DATED 29.2.2000 BEFORE THE HIGH COURT OF KERALA.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C NO. 15909 OF 2003

Dated this the 30th day of November, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of compensation claimed by District Panchayat, Alleppey. Petitioner, who was the convener of the Padasekharam Committee was given an advance of Rs. 5 lakhs for bund construction and allied work. On evaluation of the work done by the petitioner, it was found that petitioner has executed work for Rs. 3,20,280/- and consequently differential amount is demanded from the petitioner. Even though counter affidavit is not filed by the concerned Engineer, Government Pleader has given a copy of the statement received by him from the Assistant Engineer, which shows that loss was estimated after series of discussions with petitioner's participation. However, strangely he has stated that damage was caused to the constructed work and the District Collector awarded amount from the Flood Relief Fund to the petitioner for balance construction. Petitioner appears to have completed the work. Government Pleader has stated that work completed by the

petitioner was only of the value as stated above and therefore petitioner is liable to pay differential amount to the Government. According to him, since balance amount is furnished by the District Collector from the Flood Relief Fund, petitioner got double payment for the balance work and therefore he is bound to pay to the Government the excess advance received.

2. The crucial question is whether valuation of the work was done prior to flood or after the flood and after reconstruction. If it was done before flood, then petitioner is liable to pay differential cost. On the other hand, if the construction was full and complete but valuation was done after the flood damage, then petitioner cannot be held responsible for the loss unless it is found that the damage is on account of poor quality of work, which is quite likely as bund constructed with concrete materials should not yield to normal flood. More over it is not known on what basis the District Collector has given flood relief fund to the petitioner for construction work done at the cost of District Panchayat. In fact it should have been routed through District Panchayat and in that event they would have released the fund only

after satisfying itself as to whether petitioner has utilised the advance paid to him. Since documents are not available and facts are not clear, I direct the District Collector to call for the records from the District Panchayat and collect information from the Asst. Exe. Engineer, Agrl. Department, hear the petitioner and adjudicate the claim. If the petitioner is liable either on account of poor quality of construction work or short completion of work, the excess amount advanced to the petitioner should be recovered, more so when the relief fund was also released to the petitioner. The District Collector, Alleppey is directed to decide the matter finally within a period of three months from today. Interim order of stay will continue for another three months from today, and thereafter recovery will be based on District Collector's orders.

W.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge